



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2012-0019]

Dow AgroSciences LLC; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status of Soybean Genetically Engineered for Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Dow AgroSciences LLC seeking a determination of nonregulated status of soybean designated as DAS-68416-4, which has been genetically engineered for tolerance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered soybean is likely to pose a plant pest risk. We are making available for public comment the Dow AgroSciences LLC petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0019-0001>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2012-0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0019> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at [http://www.aphis.usda.gov/brs/aphisdocs/09\\_34901p.pdf](http://www.aphis.usda.gov/brs/aphisdocs/09_34901p.pdf), [http://www.aphis.usda.gov/brs/aphisdocs/09\\_34901p\\_dea.pdf](http://www.aphis.usda.gov/brs/aphisdocs/09_34901p_dea.pdf), and [http://www.aphis.usda.gov/brs/aphisdocs/09\\_34901p\\_dpra.pdf](http://www.aphis.usda.gov/brs/aphisdocs/09_34901p_dpra.pdf).

FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 851-3954, email: [john.t.turner@aphis.usda.gov](mailto:john.t.turner@aphis.usda.gov). To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 851-3892, email: [cynthia.a.eck@aphis.usda.gov](mailto:cynthia.a.eck@aphis.usda.gov).

## SUPPLEMENTARY INFORMATION:

### Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 et seq.), the regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 09-349-01p) from Dow AgroSciences LLC (DAS) of Indianapolis, IN, seeking a determination of nonregulated status of soybean (Glycine max) designated as event DAS-68416-4, which has been genetically engineered for tolerance to broadleaf herbicides in the phenoxy auxin group (such as the herbicide 2,4-D) and the herbicide glufosinate, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event DAS-68416-4 has been genetically engineered to express the aryloxyalkanoate dioxygenase protein AAD-12 and phosphinothricin acetyltransferase protein. Soybean event DAS-68416-4 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event DAS-68416-4 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

In section 403 of the Plant Protection Act, "plant pest" is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment (PPRA) to determine if soybean event DAS-68416-4 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by DAS, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, i.e., APHIS would not change the regulatory status of soybean event DAS-68416-4 and it would continue to be a regulated article, or (2) make a determination of nonregulated status of soybean event DAS-68416-4.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status of soybean event DAS-68416-4. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Paragraph (d) of § 340.6 provides that APHIS will publish a notice in the Federal Register providing 60 days for public comment for petitions for a determination of nonregulated status. On March 6, 2012, we published in the Federal Register (77 FR 13258-13260, Docket No. APHIS-2011-0129) a notice<sup>1</sup> describing our updated process for soliciting public comment when considering such petitions. As described in the notice, all petitions received by APHIS on or after March 6, 2012, will be handled using the updated process, whereby APHIS will publish two separate notices in the Federal Register for petitions for which APHIS prepares an environmental assessment. For petitions received before this date, however, we indicated that petitions may follow our previous process, i.e., the petition, draft EA, and PPRA will be made available in a single Federal Register notice for a 60-day comment period. For this petition, APHIS is following that previous process.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the

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<sup>1</sup> To view the notice, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129>.

PPRA and the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject soybean line. The petition, draft EA, and PPRA are available for public review, and copies of the petition, draft EA, and PPRA are available as indicated under ADDRESSES and FOR FURTHER INFORMATION CONTACT above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and PPRA will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, PPRA, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the Federal Register announcing the regulatory status of soybean event DAS-68416-4 and the availability of APHIS' written environmental decision and regulatory determination.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 9<sup>th</sup> day of July 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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